

TITLE VIII - IMPACT AID

Title VIII of the bill would amend Title VIII of the ESEA, which authorizes the Impact Aid program.

Section 801, purpose [ESEA, §8001]. Section 801 of the bill would amend section 8001 of the ESEA to provide that the purpose of the Impact Aid program is to provide assistance to certain LEAs that are financially burdened as a result of activities of the Federal Government carried out in their jurisdictions, in order to help those LEAs provide educational services to their children, including federally connected children, so that they can meet challenging State standards. This will provide a succinct statement of the program's purpose, as is typical of other programs, in place of the statement in the current statute, which is overly long and which refers to certain categories of eligibility that other provisions of the bill would repeal.

Section 802, payments relating to Federal acquisition of real property [ESEA, §8002]. Section 802 of the bill would amend section 8002 of the ESEA, which authorizes the Secretary to partially compensate certain LEAs for revenue lost due to the presence of non-taxable Federal property, such as a military base or a national park, in their jurisdictions. The amendments made by section 8002 would better target funds on the LEAs most burdened by the presence of Federal property, so that appropriations for section 8002, which are not warranted under current law, may be justified in the future.

Section 802(a)(1) of the bill would delete unneeded language in section 8002(a) of the ESEA that refers to the fiscal years for which payments under section 8002 are authorized. That issue is fully covered by the authorization of appropriations in section 8014 of the ESEA.

Section 802(a)(2) would delete an alternative eligibility criterion (current section 8002(a)(1)(C)(ii)), which was enacted to benefit a single LEA, and would add a requirement that the Federal property claimed as the basis of eligibility have a current aggregate assessed value (as determined under section 8002(b)(3)) that is at least 10 percent of the total assessed value of all real property in the LEA. (The current statutory requirement that Federal property constituted 10 percent of the total assessed value when the Federal Government acquired it would be retained.) The new provision will ensure that payments under section 8002 are made only to LEAs in which the presence of Federal property continues to have a significant effect on the local tax base.

Section 802(b) would repeal subsections (d) through (g) and (i) through (k) of section 8002. Each of these provisions was enacted for the benefit of a single LEA (or a limited number of LEAs) and describes a situation in which the burden, if any, from Federal property is not sufficient to warrant compensation from Federal taxpayers. The presence of these provisions reduces the amount of funds available to LEAs that legitimately request funds under this authority.

Section 802(c) would replace the soon-to-be obsolete "hold harmless" language in section 8002(h) of the ESEA with language providing for a three-year phase-out of payments to LEAs that received section 8002 payments for FY 1999, but that would no longer be eligible because of the new requirement, discussed above, that Federal property constitute at least ten percent of the current assessed value of all real property in the LEA. This phase-out will provide a fair and reasonable period for these LEAs to adjust to the loss of their eligibility, while making more funds available to those LEAs whose local tax bases continue to be affected by the presence of Federal property.

Section 802(d) would make minor conforming amendments to section 8002(b)(1).

Section 803, payments for eligible federally connected children [ESEA, §8003]. Section 803(a)(1) of the bill would amend the list of categories of children who may be counted for purposes of basic support payments under section 8003(a), by deleting the various categories of so-called "(b)" children, whose attendance at LEA schools imposes a much lower burden that does not warrant Federal compensation. As amended, these payments would be made on behalf of approximately 300,000 "(a)" students throughout the Nation, i.e.: (1) children of Federal employees who both live and work on Federal property; (2) children of military personnel (and other members of the uniformed services) living on Federal property; (3) children living on Indian lands; and (4) children of foreign military officers living on Federal property.

Section 803(a)(2) would conform the statement of weighted student units in section 8003(a)(2) to reflect the elimination of "(b)" students from eligibility.

Section 803(a)(3) would delete section 8003(a)(3) and (4), each of which relates to categories of children whose eligibility would be ended under paragraph (1).

Section 803(b)(1)(B) would delete the requirement that an LEA have at least 400 eligible students (or that those students constitute at least three percent of its average daily attendance) in order to receive a payment. Thus, any LEA with "(a)" children would qualify for a basic support payment.

Section 803(b)(1)(D) would amend section 8003(b)(1)(C) (which would be redesignated as subparagraph (B)) to delete two of the four options for determining an LEA's local contribution rate (LCR), which is used to compute its maximum payment, and to add a third method to the remaining two. These changes would make payments more closely reflect the actual local cost of educating students because each of the three options, unlike the two options that would be deleted, would include a measure of the amount or proportion of funds that are provided at the local level.

Section 803(b)(1)(E) would add a new subparagraph (C) to section 8003(b)(1) to provide that, generally, local contribution rates would be determined using data from the third preceding fiscal year. This is the most recent fiscal year for which satisfactory data on average per-pupil expenditures are usually available.

Section 803(b)(2)(B) would amend section 8003(b)(2)(B), which describes how the Secretary computes each LEA's "learning opportunity threshold" (LOT), a factor used in determining actual payment amounts when sufficient funds are not available, as is the norm, to pay the maximum statutory amounts. Under current law, an LEA's LOT is a percentage, which may not exceed 100, computed by adding the percentage of its students who are federally connected and the percentage that its maximum payment is of its total current expenditures. Under the amendments, an LEA's LOT would be 50 percent plus one-half of the percentage of its students who are federally connected. The proposed LOT would consistently favor LEAs with high concentrations of federally connected students, which face a disproportionately high burden as a result of Federal activities, unlike the current statute, which allows an LEA to reach a LOT of 100 percent even though the federally connected students constitute considerably less than 100 percent of its total student body. The revised LOT would also remove the current incentive for LEAs to reduce their local tax effort in order to earn a higher LOT.

Section 803(b)(2)(B)(i) would delete section 8003(b)(2)(B)(ii), which would no longer be needed in light of the changes to the LOT calculation described above. This section would also delete section 8003(b)(2)(B)(iii), which inappropriately benefits a single LEA by providing a different

method of calculating its LOT that is not available to any other LEA.

Section 803(b)(2)(C) would amend section 8003(b)(2)(C) to clarify that payments are proportionately increased from the amounts determined under the LOT provisions (but not to exceed the statutory maximums) when available funds are sufficient to make payments above the LOT-based amounts.

Section 803(b)(3) would delete section 8003(b)(3), which provides an unwarranted benefit to a particular State in which there is only one LEA by requiring the Secretary to treat each of the administrative districts of that LEA as if they were individual LEAs. As with other LEAs (many of which have more students than the State in question and that also have internal administrative districts), this LEA's eligibility for a payment, and the amount of any payment, should be determined with regard to the entire LEA, not its administrative units.

Section 803(c) would make a technical amendment to section 8003(c) of the ESEA, which generally requires the use of data from the immediately preceding fiscal year in making determinations under section 8003, to reflect the addition of section 8003(b)(1)(C), which provides for the use of data from the third preceding fiscal year in determining LEA local contribution rates.

Section 803(d) would amend section 8003(d) of the ESEA, which authorizes additional payments to LEAs on behalf of children with disabilities, to conform to the deletion of "(b)" children from eligibility for basic support payments, and to reflect the fact that some of these children may be eligible for early intervention services, rather than a free appropriate public education, under the Individuals with Disabilities Education Act.

Section 803(e) would delete the "hold-harmless" provisions relating to basic support payments in section 8003(e) of the ESEA. By guaranteeing that certain LEAs continue to receive a high percentage of the amounts they received in prior years, without regard to current circumstances, these provisions inappropriately divert a substantial amount of funds from LEAs that have a greater need, based on the statutory criteria.

Section 803(f) of the bill would amend section 8003(f) of the ESEA, which authorizes additional payments to LEAs that are heavily impacted by the presence of federally connected children in their schools. In general, the amendments to this provision are designed to ensure that eligibility for these additional

payments is restricted to those relatively few LEAs for whom it is warranted, and that the amounts of those payments accurately reflect the financial burden caused by a large Federal presence in those LEAs.

Under section 8003(f)(2), an LEA would have to meet each of three criteria to qualify for a payment. First, federally connected children (i.e., "(a)" children) would have to constitute at least 40 percent of the LEA's enrollment and the LEA would have to have a tax rate for general-fund purposes that is at least 100 percent of the average tax rate of comparable LEAs in the State. Any LEA whose boundaries are the same as those of a military installation would also qualify. Second, the LEA would have to be exercising due diligence to obtain financial assistance from the State and from other sources. Third, the State would have to make State aid available to the LEA on at least as favorable a basis as it does to other LEAs.

Section 8003(f)(3) would replace the highly complicated provisions of current law relating to the computation of payment amounts for heavily impacted LEAs, including its multiple formulas, with a single formula that, for each eligible LEA, would factor in per-pupil expenditures, the number of its federally connected children, the amount available to it from other sources for current expenditures, and the amount of basic support payments it receives under section 8003(b) and the amount of supplemental payments for children with disabilities it receives under section 8003(d).

Section 8003(f)(4) would direct the Secretary, in determining eligibility and payment amounts for heavily impacted LEAs, to use data from the second preceding fiscal year, if those data are provided by the affected LEA (or the SEA) within 60 days of being requested by the Secretary to do so. If any of those data are not provided by that time, the Secretary would use data from the most recent fiscal year for which satisfactory data are available. This should provide ample time for LEAs (and States, as may be necessary for certain data) to provide that information so that the Secretary can make payments to LEAs, for whom these funds constitute a substantial portion of their budgets, on a timely basis.

Section 803(g) of the bill would delete section 8003(g) of the ESEA, which authorizes additional payments to LEAs with high concentrations of children with severe disabilities. (These payments are separate from the payments for children with disabilities under section 8003(d), which the bill would

continue to authorize.) This complicated authority has never been funded.

Section 803(h) would amend section 8003(h) of the ESEA to prohibit an LEA from receiving a payment under section 8003 on behalf of federally connected children if Federal funds (other than Impact Aid funds) provide a substantial portion of their educational program. This provision, which would codify the Department's regulations (see 34 CFR 222.30(2)(ii)), recognizes that the responsibility for the costs of a child's basic education rests with an LEA and that, if the Federal Government is already paying a substantial portion of those costs through some other program, it should not provide additional funds on behalf of that child through the Impact Aid program.

Section 803(i) of the bill would delete the requirement, in section 8003(i) of the ESEA, that LEAs maintain their fiscal effort for education from year to year as a condition of receiving a payment under either section 8002 or section 8003. While appropriate in other Federal education programs that are meant to provide funds for supplemental services, or to benefit children with particular needs, a maintenance-of-effort requirement is not appropriate for the Impact Aid program, which is intended to help LEAs meet the local costs of providing a free public education to federally connected children.

Section 804, policies and procedures relating to children residing on Indian lands [ESEA, §8004]. Section 804(1) of the bill would change the heading of section 8004 of the ESEA to "Indian Community Participation", to reflect amendments the bill would make to this section.

Section 804(2) would retain the current requirements of section 8004(a) of the ESEA under which an LEA that claims children residing on Indian lands in its application for Impact Aid funds must ensure that the parents of Indian children and Indian tribes are afforded an opportunity to present their views and make recommendations on the unique educational needs of those children and how those children may realize the benefits of the LEA's educational programs and activities. Section 804(2) would also add language providing that an LEA that receives an Indian Education Program grant under Subpart 1 of Part A of Title IX shall meet the requirements described in the previous sentence through activities planned and carried out by the Indian parent committee established under the Indian Education program, and could choose to form such a committee for that purpose if it is not participating in the Title IX program. An LEA could meet its obligations under section 8004(a) by complying with the parental involvement provisions of Title I

and must comply with those provisions for Indian children who it serves under Title I. Finally, an LEA could use any of its section 8003 funds (except for the supplemental funds provided on behalf of children with disabilities) for activities designed to increase tribal and parental involvement in the education of Indian children.

Section 804(3) would streamline the language in section 8004(b), relating to LEA retention of records to demonstrate its compliance with section 8004(a), without changing the substance of that provision.

Section 804(4) would delete subsection (c) of section 8004, which automatically waives the substantive requirement of subsection (a) and the record-keeping requirement of subsection (b) with respect to the children of any Indian tribe that provides the LEA a written statement that it is satisfied with the educational services the LEA is providing those children. The proposed amendments relating to community involvement are sufficiently important that all affected LEAs should comply with them and keep records to document their compliance. Removing this waiver provision would also be consistent with the prohibition on waiving any statutory or regulatory requirements relating to parental participation and involvement that applies to the Secretary's general authority to issue waivers across the entire range of ESEA programs. See §14401(c)(6) of the ESEA.

Section 805, applications for payments under sections 8002 and 8003 [ESEA, §8005]. Section 805 of the bill would amend section 8005 of the ESEA, relating to applications for payments under sections 8002 and 8003, by: (1) conforming a reference to the amended section 8004 in subsection (b)(2); (2) deleting a reference in subsection (d)(2) to section 8003(e), to reflect the proposed repeal of that "hold-harmless" provision; and (3) deleting subsection (d)(4), which provides an unwarranted benefit to a single State.

Section 806, payments for sudden and substantial increases in attendance of military dependents [ESEA, §8006]. Section 806 of the bill would repeal section 8006 of the ESEA, which authorizes payments to LEAs with sudden and substantial increases in attendance of military dependents. This authority has never been used and is not needed.

Section 807, construction [ESEA, §8007]. Section 807 of the bill would amend, in its entirety, section 8007 of the ESEA, which authorizes grants to certain categories of LEAs to support the construction or renovation of schools. As amended, section 8007(a) would authorize assistance only to an LEA that receives

a basic support payment under section 8003 and in which children residing on Indian lands make up at least half of the average daily attendance (one of the current eligible categories). This limitation on eligibility would target limited construction funds on LEAs with substantial school-construction needs and severely limited ability to meet those needs.

Subsection (b) of section 8007 would require an interested LEA to submit an application to the Secretary, including an assessment of its school-construction needs.

Subsection (c) would provide that available funds would be allocated to qualifying LEAs in proportion to their respective numbers of children residing on Indian lands.

Subsection (d) would set the maximum Federal portion of the cost of an assisted project at 50 percent, and give an LEA three years after its proposal is approved to demonstrate that it can provide its share of the project's cost.

Subsection (e) would clarify that an LEA could use a grant under this section for the minimum initial equipment necessary for the operation of the new or renovated school, as well as for construction.

Section 808, facilities [ESEA, §8008]. Section 808 would make a conforming amendment to section 8008 of the ESEA, relating to certain school buildings that are owned by the Department but used by LEAs to serve dependents of military personnel, to reflect the revised authorization of appropriations in section 8014.

Section 809, State consideration of payments in providing State aid [ESEA, §8009]. Section 809 of the bill would amend section 8009 of the ESEA, which generally prohibits a State from taking an LEA's Impact Aid payments into account in determining the LEA's eligibility for State aid (or the amount of that aid) unless the Secretary certifies that the State has in effect a school-finance-equalization plan that meets certain criteria.

Section 809(2) would add, to section 8009(b)(1)'s statement of preconditions for State consideration of Impact Aid payments, a requirement that the average per-pupil expenditure (APPE) in the State be at least 80 percent of the APPE in the 50 States and the District of Columbia. This will help ensure that LEAs in States with comparatively low expenditures for education receive adequate funds before the State reduces State aid on account of Impact Aid payments.

Section 809 would also make technical and conforming amendments to section 8009.

Section 810, Federal administration [ESEA, §8010]. Section 810 of the bill would repeal subsection (c) of section 8010 of the ESEA. Subsection (c)(1) sets out a special rule that does not apply after fiscal year 1995. Subsections (c)(2) and (3) provide an unwarranted special benefit to a single LEA.

Section 811, administrative hearings and judicial review [ESEA, §8011]. Section 811 of the bill makes a technical amendment to section 8011(a) to streamline that provision.

Section 812, forgiveness of overpayments [ESEA, §8012]. Section 812 of the bill makes a technical amendment to section 8012 to streamline that provision.

Section 813, definitions [ESEA, §8013]. Section 813(1) of the bill would conform the definition of "current expenditures" in section 8013(4) of the ESEA to conform to the proposed repeal of current Title VI and to a corresponding amendment to a similar definition of the term in current section 14101(11).

Section 813(2) would amend the definition of "Federal property" (an important basis of eligibility for Impact Aid payments) in section 8013(5) to delete references to certain property that would not normally be regarded as Federal property; these references were enacted for the special benefit of a small number of LEAs. This property does not merit payment under the Impact Aid program.

Section 813(3) through (7) would make technical and conforming amendments to other definitions in section 8013, and delete the definitions of "low-rent housing" and "revenue derived from local sources", which are, respectively, no longer needed and an unwarranted special-interest provision.

Section 814, authorization of appropriations [ESEA, §8014]. Section 814 of the bill would amend section 8014 of the ESEA to authorize the appropriation of funds to carry out the various Impact Aid authorities through fiscal year 2005. New subsection (b) of section 8014 would provide that funds appropriated for school construction under section 8007 and for facilities maintenance under section 8008 would be available to the Secretary until expended. However, if appropriations acts, which normally contain provisions governing the applicability of the funds they appropriate, provide a different rule than the one in proposed section 8014(b), the appropriations acts would govern.